IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter VIII, Rule 32(2) (b)

Description of Case

Date of decision :07.11.2007

Writ Petition No. 1136 (M/S) of 2007

A.F.R. (Approved for Reporting)

Not approved for Reporting

(Initial of Judge)

Date : 07.11.2007

Note :- Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1136 (M/S) of 2007

M/s Shree Prabhu Sharan Ispat Pvt. Ltd.,
437, M. Garhinegi Kashipur,
District Udham Singh Nagar,
Through Arvind Kumar Mittal, Director.

……Petitioner.

Versus

(1) Uttaranchal Power Corporation Ltd.
Urja Bhawan, Kanwali Road, Dehradun,
Through Chairman & Managing Director.
(2) Executive Engineer, Distribution Division,
Uttaranchal Power Corporation Ltd.,
Kashipur, Udham Singh Nagar.

……Respondents

Sri Naresh Pant, Advocate, holding brief of Ms. Menka Tripathi, counsel for the petitioner.
Sri B.D. Upadhyay, counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, the petitioner has sought writ in the nature of mandamus commanding the respondents to sanction fresh electric connection of 1800 K.V.A. to the petitioner, in the premises of the petitioner's Company. A further mandamus has been sought directing the respondents not to release the outstanding dues of M/s J.K.M. Steels Pvt. Ltd., as a condition precedent for sanction of new connection.

(2) Heard learned counsel for the parties and perused the record.

(3) Brief facts of the case are that petitioner is owner/occupier of premises known as M/s Shree Prabhu Sharan Ispat Pvt. Ltd., 437 M, Garhinegi, Kashipur, District Udham Singh Nagar. Petitioner's case is that he is a bona fide auction-purchaser of the industrial unit, which was earlier known as M/s J.K.M. Steels Pvt. Ltd. The said auction appears to have been done under the provisions of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It appears that M/s J.K.M. Steels Pvt. Ltd. could not repay the loan sanctioned to it by the Union Bank of India and said Bank took the possession of the unit and auctioned the same. It has been stated by the petitioner in the writ petition that he is a bona fide purchaser through auction got conducted by Union Bank of India and as such merely for the reason that he being new owner/ occupier of the premises cannot be held liable to pay the outstanding electricity dues of M/s J.K. M. Steels Pvt. Ltd. Now the petitioner has taken a loan from the Bank to start his business from the premises and is in the need of new electricity connection for which he has moved an application to the respondents for 1800 K.V.A. supply. The application was made on 20th December 2006, completing all necessary formalities. However, respondent no. 2 is insisting on the condition that unless the outstanding dues of M/s J.K.M. Pvt. Ltd. are cleared by the petitioner, he cannot be given an electric connection sought by him. In Para 13 of the writ petition, it has further been stated that vide Office Memorandum dated 16.08.2004 (copy Annexure 5 to the writ petition), the respondent no. 1 itself has issued directions

to Directors, General Managers and Executive Engineers, working under it that if a new management has purchased bona fide some industrial unit, clearance of outstanding dues of the previous owner/occupier will not be insisted upon. Claiming the petitioner-Company as a separate legal entity, it is alleged in the petition that the dues of previous Company, who owned the industrial until cannot be recovered from the subsequent Company. With these averments, the writ petition is filed by the petitioner.

(4) A counter affidavit has been filed on behalf of the respondents, in which Para 1 to 9 of the writ petition are not denied. However, it is stated that there are outstanding dues to the tune of Rs. 726 lacs from the M/s J.K.M. Steels Pvt. Ltd., which had already taken the electric connection in the premises in question. It is further stated that the Office Memorandum dated 16.08.2004, issued by respondent no. 1 only covers the units purchased from the U.P. State Financial Corporation. It is further stated in the counter affidavit that the petitioner has failed to complete all the formalities for getting supply of the connection and vide order dated 07.04.2007, the petitioner was directed to submit six documents so that his case of new connection may be considered. An affidavit dated 08th October 2007, has been filed on behalf of the petitioner with Application No. 2988 of 2007, wherein Annexure A- 2, copy of the Government Order dated 27th August 2007, is enclosed which provide that Steel units be given electricity connections as per the Rules.

(5) It is not disputed that premises in question were earlier occupied by M/s J.K.M. Steels Pvt. Ltd. It is also not disputed

that under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the creditor Union Bank of India got said premises auctioned to release the loan advanced to said Company. It is also not disputed in the counter affidavit that in the auction, petitioner M/s Shree Prabhu Sharan Ispat Pvt. Ltd. purchased the unit. The only question of consideration before this Court is that whether the respondents can insist to clear the outstanding electricity dues of the Company / person who owned the unit before it was auctioned. In this connection on behalf of the respondents attention of this Court is drawn to Regularization No. 2.3.2.1. of Uttarakhand Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2007, and it is contended that unless the petitioner cleared outstanding dues of the earlier occupier, he is not entitled to electric connection prayed by him.

(6) Said Para 2.3.2.1. of the Regulation reads as under:

> ***"2.3.2.1. Change of Consumer's name due to change in ownership/occupancy of property***
>
> *(1) The applicant shall apply for change of consumer's name in the format prescribed at Annex II to these Regulations along with copy of latest bill duly paid. The application shall be accepted on showing proof of lawful ownership/ occupancy of property. NOC from previous occupant of the premises shall be required for cases involving transfer of security deposit in the name of applicant. The change of consumer's name shall be effected within two billing cycles after acceptance of application. Any old dues*

on the property shall be payable by new consumer as per provisions of section 56 (2) of the Act."

Reading whole of the above quoted para makes it clear that it applies to those consumers who want change of the consumer's name in an existing supply provided to the consumer/ occupant. Learned counsel for the respondents stressed on the sentence 'any old dues on the property shall be payable by new consumer as per provisions of section 56(2) of the Act'. The said sentence cannot be read separately. Reading of clause (1) of Para 2.3.2.1. of the Regulation quoted above as a whole makes the meaning clear.

(7) On behalf of respondents reference is also made to condition no. 2 contained in Para 2 of Annexure 10 to the Regulation, Uttarakhand Electricity Regulatory Commission (Electricity Supply Code) Regulation, 2007 which provides that where the applicant has purchased an existing property whose electricity connection has been disconnected, it shall be the duty of the applicant to verify that the previous owner has paid all dues to the Licensee and has obtained a "no-dues certificate" from him. In case such "no-dues certificate" has not been obtained by the previous owner, before purchase of property the new owner may approach the concerned officer of the Licensee for a such certificate. The licensee shall acknowledge the receipt of such request and shall either intimate in writing the dues outstanding on the premises, if any, or issue to "no-dues certificate" within one month from the date of receipt of such application. In case the Licensee does not intimate the outstanding dues or issue the "no-dues certificate" within this time, new connection on the premises shall not be denied on

ground of outstanding dues of the previous consumer. In such an event, the licensee shall have to recover his dues from previous consumer as per provisions of law.

(8) Having gone through said condition contained in Annexure X of the Regulations, this Court is of the view that where the purchaser of the existing property seeks re-connection of the supply, the aforementioned condition would be required to be fulfilled. This Court is of the view that there is distinction between the bona fide purchasers in auction of the premises and others. What is to be avoided is that the defaulters should not be allowed to get the connection with another name of the unit. In ***Isha Marbles Vs. Bihar State Electricity Board and another, (1995) 2 Supreme Court Cases 648,*** the Apex Court has observed as under:-

"……..Electricity is public property. Law, in its majesty, benignly protects public property and behoves everyone to respect public property. Hence, the courts must be zealous in this regard. But, the law, as it stands, is inadequate to enforce the liability of the previous contracting party against the auction-purchaser who is a third party and is in no way connected with the previous owner/occupier……..."

(9) Leaned counsel for the respondents relied on ***Suraj K.R. Vs. Secretary, Kerala State Electricity Board & Anr., AIR 2006 Kerala 194 (Full Bench),*** in which while interpreting Regulation 15(e) applicable to the consumer of Kerala Electricity Board, it has been held that the purchaser of the industrial unit is required to make the payment of the outstanding dues of the previous

consumer / occupier. Had there been an analogous provision in the Regulation of Uttarakhand Power Corporation Limited, this Court could have been persuaded to take the same view. I have already quoted the relevant Regulation applicable to the case. From the facts and circumstances, as mentioned above since it is a case of new connection applied by a bona fide auction-purchaser who has purchased the industrial unit in the auction held by Union Bank of India under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, and new connection has been applied. The above case law does not held the respondents.

(10) Annexure-5 to the writ petition is the copy of Office Memorandum dated 16.08.2004, issued by Uttaranchal Power Corporation Limited, which reads as under:-

"In compliance of Board's decision taken in its meeting held of 06.08.2004, UPCL's Office Memorandum No. 2562/उपाकालि /कॉम/ई-I, dated 09-03-2004 regarding recovery of the past electricity dues from industrial units taken over by U.P. Finance Corporation Limited (UPFC) is hereby superceded and following provisions are made.

(1) The new management of the unit who has purchased the unit/premises from UPFC will be allowed/ released a new connection in the same premises after completion of all the formalities as per applicable rules and regulations of Corporation and the payment of outstanding dues against the electricity in respect of the premises will not be insisted upon as a condition precedent for the supply of electricity to

him unless it is proved that any party has stepped under the garb of new entity purely to defraud and chest UPCL and to evade payment of past dues and/ or there is close nexus between the previous and the present owner /management.

(2) Consequent to above the UPCS's Office Memorandum No. 831/उपाकालि /कॉम/ई-I, दिनांक 31-10-2002 is superceded with immediate effect."

The abovementioned Office Memorandum of the respondent no. 1 further clarifies the position in favour of the petitioner.

(11) For the reasons as discussed above, this Court is of the view that this writ petition deserves to be allowed. The writ petition is allowed. The respondents shall provide new electric connection sought by the petitioner provided the petitioner fulfills all the conditions required under the Regulations.

(Prafulla C. Pant, J.)

07.11.2007
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